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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/954,773	09/18/2001	David A. Lightfoot	1268/2/2	8934
25297	7590	12/08/2006		
JENKINS, WILSON, TAYLOR & HUNT, P. A. 3100 TOWER BLVD SUITE 1200 DURHAM, NC 27707				
			EXAMINER KRUSE, DAVID H	
			ART UNIT 1638	PAPER NUMBER

DATE MAILED: 12/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

STATUS OF THE APPLICATION

1. This Office action is in response to the Remarks filed 5 September 2006 and the response filed 10 October 2006.
2. The objection to the specification is withdrawn in view of Applicant's amendment.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

4. Claims 38-40 remain rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. This rejection is repeated for the reason of record as set forth in the last Office action mailed 2 March 2006. Applicant's arguments filed 5 September 2006 have been fully considered but they are not persuasive.

The limitations at claim 38, lines 5 and 6, "about 5×10^3 spore/cm³ soil or less" and at claim 39, line 6, "about 3×10^3 spore/cm³ soil or less", are not supported by the written description and are New Matter. Specifically the limitation "about" at claim 38 and the limitation "or less" at claims 38 and 39 are not supported by the specification. Applicant only describes three specific inoculum densities on page 81, 2nd paragraph of the specification. There does not appear to be sufficient support for the claimed ranges of inoculum as recited in the instant claims.

Applicants argue that support for the claim can be found throughout the specification as filed, including particularly at page 84, lines 1-5 ("inoculum densities of less than 3×10^3 spore per cm^3 of soil"). Applicants argue that additional support can be found can in claim 39 as originally filed ("an inoculum density of about 3×10^3 spore/ cm^3 soil"), thus, no new matter is believed to have been added by any of the amendments to the claims (page 7 of the Remarks filed 5 September 2006). These arguments are not found to be persuasive. The limitation "about" broadens the claimed inoculum level(s) or range, and is not supported in the specification. As Applicant states the specification describes inoculum densities of less than 3×10^3 spore per cm^3 of soil. While the Examiner views that 3×10^3 spore per cm^3 of soil as an upper limit of the claimed range is adequately supported, the limitation "about" broadens the upper limit of the range and is neither supported or defined by the specification. The rejection is maintained.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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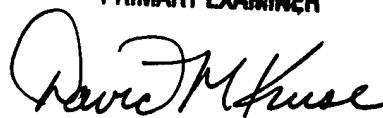
the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Claims 41-45 are allowed.
7. Claims 38-40 remain rejected.
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David H. Kruse, Ph.D. whose telephone number is (571) 272-0799. The examiner can normally be reached on Monday to Friday from 8:00 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached at (571) 272-0975. The central FAX number for official correspondence is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group Receptionist whose telephone number is (571) 272-1600.

DAVID H. KRUSE, PH.D.
PRIMARY EXAMINER

A handwritten signature in black ink, appearing to read "David H. Kruse", written in a cursive style.

David H. Kruse, Ph.D.
29 November 2006

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9. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to (571) 272-0547.

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